

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

John M. Calef

v.

Civil No. 11-cv-526-JL

Citibank, N.A. et al.

SUMMARY ORDER

Before the court is defendants' assented-to motion to extend the deadlines to move for summary judgment and to strike plaintiff's expert witness. Under the scheduling order, the summary judgment deadline is September 27, 2012, and the deadline for challenges to expert testimony is October 1, 2012. [Order](#) of Jan. 23, 2012. Defendants request an extension because they have "been actively working" to obtain the documents they need in order to move for summary judgment from third parties to this action, but have not yet been able to get those documents (though they claim to be "hopeful that the documents will be provided in the near future").

A scheduling order "may be modified only for good cause." [Fed. R. Civ. P. 16\(b\) \(4\)](#); see also [Steir v. Girl Scouts of the USA](#), 383 F.3d 7, 12 (1st Cir. 2004). It is difficult to see why any modification should be permitted here. While the court appreciates the defendants' efforts to "actively work" with the third parties to obtain the necessary documents, [Federal Rule of](#)

Civil Procedure 45 provides defendants with a surefire means to compel those third parties to produce those documents in a timely manner: a subpoena. Defendants offer no reason for failing to employ that procedure. In any event, while an inability to obtain the necessary documents might conceivably justify an extension to the summary judgment deadline, it is not evident to the court how that justifies an extension of the deadline for expert challenges.

Notwithstanding these doubts, the motion (document no. 15) is GRANTED. The deadline for summary judgment motion is extended to **November 12, 2012**, the deadline for expert challenges is extended to **November 15, 2012**, and trial will be rescheduled for **April 2013**. If defendants' hopes that the documents are provided "in the near future" are not realized, they may wish to avail themselves of the subpoena procedure provided for in Rule 45.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: September 21, 2012

cc: Philip A. Brouillard, Esq.
Andrew Scott Winters, Esq.
Mary Ellen Manganelli, Esq.